IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 185 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

GORDHANBHAI JETHABHAI TOBACCO INDUSTRIES PVT LTD

Appearance:
1. INCOME TAX REFERENCE No. 185 of 1988
MR BB NAIK, for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 26/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions are referred for our opinion for

the relevant assessment years as mentioned at the outset:-

A.Ys. 1981-82, 1982-83 & 1983-84

(1) Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in coming to the conclusion that the assessee company was engaged in manufacturing and processing activities and was, therefore, an Industrial Company ?

A.Y. 1981-82

(2) Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in coming to the conclusion that the assessee company was entitled to relief u/s. 80J ?

2. We have heard Mr BB Naik, learned counsel for the revenue. Though served, none appears for the respondent-assessee.

3. As far as the first question is concerned, there is no dispute about the fact that the assessee's business consists of crushing large tobacco leaves and cutting into smaller pieces, sieving them i.e. after removing the dust and unwanted stems from the tobacco leaves, selling them to the bidi manufacturers. In connection with another assessee carrying on the same business (Ashwinkumar Gordhanbhai & Bros. Pvt. Ltd.), this Court decided in Commissioner of Income-tax vs. Ashwinkumar Gordhanbhai & Bros. Pvt. Ltd., (1995) 212 ITR 614) that the aforesaid business involves manufacturing or processing of goods and the assessee is, therefore, an Industrial Company.

Following the aforesaid decision, our answer to the first question is in the affirmative i.e. in favour of the assessee and against the revenue.

4. Coming to the second question, the Tribunal confirmed the order of the Commissioner (Appeals) who had based his decision in favour of the assessee for granting the relief under Section 80J for the assessment year 1981-82 on the basis of his decision i.e. appellate order for the assessment year 1980-81. The Tribunal

found that there was no distinguishing feature and, therefore, the view of the Commissioner for the assessment year 1981-82 was also required to be confirmed. Apart from the aforesaid aspect, it appears to us that the question sought to be raised before us in respect of the relief under Section 80J merely involves an amount of Rs.16,054/- and the question whether the assessee is or is not employing more than 20 workers in his processing unit as envisaged under Section 80J(4)(iv) involves a disputed question of fact on which the Commissioner (Appeals) and the Tribunal have given concurrent finding in favour of the assessee.

In view of the above discussion, our answer to the second question is also in the affirmative i.e. in favour of the assessee and against the revenue.

5. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-